

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ELLEN J. O'PHELAN; DAN J.	)	CIVIL NO. 08-00407 HG-KSC
O'PHELAN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
JEFF MEEK; MARYLOU ASKREN,	)	
	)	
Defendants.	)	
_____	)	
	)	

ORDER ADOPTING MARCH 30, 2009 FINDINGS AND RECOMMENDATION TO  
GRANT DEFENDANT'S MOTION TO REMAND AND AWARD DEFENDANT ATTORNEYS'  
FEES AND COSTS (DOC. NO. 90)

AND

DENYING PLAINTIFFS' OBJECTIONS THERETO FILED ON APRIL 16, 2009  
(DOC. NO. 91)

AND

AFFIRMING THE MAGISTRATE JUDGE'S DENIAL OF:

- (1) PLAINTIFFS' OPPOSITION TO SUPPLEMENT TO FINDINGS AND  
RECOMMENDATION TO GRANT DEFENDANT'S MOTION TO REMAND (DOC.  
NO. 55);
- (2) PLAINTIFFS' MOTION FOR RECONSIDERATION (DOC. NO. 60);
- (3) PLAINTIFFS' SECOND MOTION FOR RECONSIDERATION (DOC. NO. 70);
- (4) PLAINTIFFS' AMENDED MOTION FOR HEARING MOTION FOR  
EVIDENTIARY HEARING (DOC. NO. 71);
- (5) PLAINTIFFS' FIRST MOTION FOR GERARD LEE LOY TO COMPLY WITH  
COURT RULES (DOC. NO. 78);
- (6) PLAINTIFFS' SECOND MOTION THAT EVIDENCE OF GERARD LEE LOY'S  
CREDIBILITY BE REVIEWED (DOC. NO. 81);
- (7) DEFENDANT'S SECOND MOTION FOR FEES AND COSTS (DOC. NO. 82);
- (8) PLAINTIFFS' FIRST MOTION TO STRIKE MOTION FOR ATTORNEYS'  
FEES (DOC. 83); AND
- (9) REPLY TO DEFENDANT'S MEMORANDUM AND MOTION TO RECONSIDER  
(DOC. NO. 89)

On March 30, 2009, the Magistrate Judge entered a Findings and Recommendation that Defendant Marylou Askren's Motion to Remand to State Court and Award Defendant Aksren Attorneys' Fees and Costs be granted. (Doc. 90, "F&R".) On April 16, 2009, Plaintiffs filed objections to the F&R. (Doc. 91).

#### **STANDARD OF REVIEW OF FINDINGS AND RECOMMENDATION**

A magistrate judge may be assigned to prepare findings and recommendations for a district judge on a pretrial matter that is dispositive of a claim. Fed. R. Civ. P. 72(b). If a party to the proceedings objects to the magistrate judge's findings or recommendations, the district court must review de novo those portions to which objection is made. See United States v. Raddatz, 447 U.S. 667, 673 (1980); Fed. R. Civ. P. 72(b). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge, or recommit the matter to the magistrate judge.

De novo review means the district court must consider the matter anew, as if it had not been heard before and as if no decision previously had been rendered. See Ness v. Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992). The district court must arrive at its own independent conclusion about those portions to which objections are made, but a de novo hearing is not required. United States v. Remsing, 874 F.2d 614, 617-18 (9th Cir. 1989).

### **ANALYSIS**

The Court adopts the F&R to grant Defendant Askren's motion to remand to State Court. The Court denies the objections thereto filed by Plaintiff.

The Court has reviewed the objections, which renew the same arguments raised before the Magistrate Judge in the motion to remand. The Court finds there is no issue that was not thoroughly discussed and explained in the Magistrate Judge's F&R. The Court considers the Magistrate Judge's analysis to be accurate and instructive, and finds there is no purpose in repeating the analysis here.

### **STANDARD OF REVIEW OF APPEAL OF MAGISTRATE JUDGE'S ORDER**

Pursuant to Local Rule 74.1, any party may file an appeal from a magistrate judge's order determining a nondispositive matter within eleven days after issuance of the magistrate judge's order. The district judge shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The district judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule. See Local Rule 74.1; 28 U.S.C. § 636(b)(1)(A).

### **ANALYSIS**

The Court has considered the Plaintiff's appeal of the Magistrate Judge's ruling on the nine filings by the plaintiff

and all related filings by Defendant Askren. The Court finds no basis to set aside any portion of the Magistrate Judge's order as clearly erroneous or contrary to law. The Magistrate Judge's order correctly points out that all of the Plaintiff's filings fail to present a basis for reconsideration of the F&R or the Supplement. None of the filings present any new material facts not previously available, intervening changes in law, manifest errors of law or fact, or any grounds for reconsideration enumerated in Federal Rule of Civil Procedure 60(b). The Appeal of the Nine filings is **DENIED**. The Magistrate Judge's Order (Doc. 90) is **AFFIRMED**.

#### CONCLUSION

For the foregoing reasons,

1. The Magistrate Judge's March 30, 2009, Findings and Recommendation to Grant Defendant Marylou Askren's Motion to Remand to State Court (Doc. 90) is **ADOPTED**;
2. Plaintiffs' objections filed on April 16, 2009 (Doc. 91) are **DENIED**; and
3. Plaintiffs' Appeal of the Magistrate Judge's Order denying the relief asked in the nine filings by Plaintiffs:
  - (1) PLAINTIFFS' OPPOSITION TO SUPPLEMENT TO FINDINGS AND RECOMMENDATION TO GRANT DEFENDANT'S MOTION TO REMAND (DOC. NO. 55);
  - (2) PLAINTIFFS' MOTION FOR RECONSIDERATION (DOC. NO. 60);
  - (3) PLAINTIFFS' SECOND MOTION FOR RECONSIDERATION (DOC. NO.

70);

- (4) PLAINTIFFS' AMENDED MOTION FOR HEARING MOTION FOR EVIDENTIARY HEARING (DOC. NO. 71);
- (5) PLAINTIFFS' FIRST MOTION FOR GERARD LEE LOY TO COMPLY WITH COURT RULES (DOC. NO. 78);
- (6) PLAINTIFFS' SECOND MOTION THAT EVIDENCE OF GERARD LEE LOY'S CREDIBILITY BE REVIEWED (DOC. NO. 81);
- (7) DEFENDANT'S SECOND MOTION FOR FEES AND COSTS (DOC. NO. 82);
- (8) PLAINTIFFS' FIRST MOTION TO STRIKE MOTION FOR ATTORNEYS' FEES (DOC. 83); AND
- (9) REPLY TO DEFENDANT'S MEMORANDUM AND MOTION TO RECONSIDER (DOC. NO. 89)

is **DENIED**. The Magistrate Judge's Order (Doc. 90) is **AFFIRMED**.

IT IS SO ORDERED.

DATED: June 16, 2009, Honolulu, Hawaii.



/S/ Helen Gillmor

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Helen Gillmor  
United States District Judge